

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

8:17CV255

**MEMORANDUM
AND ORDER**

This matter is before the court on its own motion. On July 13, 2017, Petitioner filed a Petition for Writ of Habeas Corpus. ([Filing No. 1.](#)) Pursuant to the court's Memorandum and Order ([Filing No. 2.](#)), Petitioner later filed a Motion for Leave to Proceed in Forma Pauperis. ([Filing No. 3.](#)) As a result, the clerk's office requested a trust account statement from Petitioner's institution at the time, the Douglas County Correctional Center ("DCCC"). ([Filing No. 4.](#)) The records supervisor at the DCCC, in response, sent a letter to the court advising that Petitioner was no longer being held there and that he left on August 2, 2017. ([Filing No. 5.](#)) The court construed the letter to mean that Petitioner was released from custody, so it ordered Petitioner to (1) update his address within 30 days and (2) file a new request to proceed in forma pauperis or pay the \$5.00 filing fee within 30 days, or face dismissal of this action. ([Filing No. 6.](#)) The court also denied Petitioner's Motion for Leave to Proceed in Forma Pauperis as moot, because it believed that he was no longer confined. (*Id.*) However, Petitioner called the undersigned's chambers this week and stated that he is confined at the Diagnostics and Evaluation Center. Based upon this information,

IT IS THEREFORE ORDERED that:

1. The clerk's office is directed to re-open Petitioner's Motion for Leave to Proceed in Forma Pauperis ([Filing No. 3.](#)).

2. The clerk's office is directed to request a certified trust account statement for Petitioner from the Diagnostics and Evaluation Center in Lincoln, Nebraska.

3. The clerk's office is directed to update Petitioner's address on the docket sheet to reflect that Petitioner is confined at the Diagnostics and Evaluation Center.

Dated this 13th day of September, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge